No. 95-1268

(3)

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1995

STATE OF MARYLAND,

Petitioner,

vs.

JERRY LEE WILSON,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF
MARYLAND.

BRIEF AMICI CURIAE
OF
AMERICANS FOR EFFECTIVE
LAW ENFORCEMENT, INC.,
JOINED BY
THE INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE, INC.,
THE NATIONAL DISTRICT ATTORNEYS
ASSOCIATION, INC.,
THE NATIONAL SHERIFFS' ASSOCIATION, AND
THE POLICE LAW INSTITUTE,
IN SUPPORT OF THE PETITIONER.

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BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., THE NATIONAL SHERIFFS' ASSOCIATION, AND THE POLICE LAW INSTITUTE, IN SUPPORT OF THE PETITIONER.

This Brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), is a national not-for-profit educational organization that conducts legal research and provides law bulletins and continuing legal education programs for law enforcement administrators and their counsel.

AELE has appeared before this Court as *amicus curiae* more than one hundred times and many times in other federal and state appellate courts. Its *amicus* program seeks to establish a body of law that enhances the effectiveness of law enforcement agencies, in a constitutional manner.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 72 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publications, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all our citizens.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective admin-

istration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

The Police Law Institute is an independent research and training facility located on the University of Iowa's Oakdale Research Campus. Started in 1983, the Institute currently provides legal training to police agencies in several states through the use of computer-based lessons and printed reference summaries. Its primary mission is to train law enforcement officers and supervisors, on a continuing basis, to be legally effective and efficient in the protection of the people in their communities from criminal activity, while respecting the legal rights of each individual they encounter.

Amici are national professional organizations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of administering policies and procedures involving the conduct of traffic stops; and (2) prosecutors and police legal advisors who are called upon to advise law enforcement officers and administrators in connection with such matters.

Because of the relationship with our members and clients, and the composition of our membership and directors—including active law enforcement administrators and counsel at the local, state, and national level and law enforcement trainers—we are particularly aware of the impact of the ruling of the court below. We respectfully ask this Court to consider this information in reaching its decision in this case.

ARGUMENT

THIS COURT SHOULD ADOPT A "BRIGHT LINE" RULE THAT WHEN A LAW ENFORCEMENT OFFICER MAKES A LAWFUL TRAFFIC STOP, THE OFFICER HAS AN ABSOLUTE RIGHT TO CONTROL BOTH THE DRIVER AND PASSENGERS BY REQUIRING THEM TO EITHER REMAIN INSIDE IN THE VEHICLE OR EXIT AND REMAIN IN THE IMMEDIATE VICINITY DURING THE STOP.

A police officer on solo patrol observed a car speeding on an interstate highway and pulled it over (although it is noteworthy that the vehicle continued for approximately 1½ miles after the officer activated his lights and siren before stopping). The officer could see three people in the car, two in the front seat, and one person in the back seat. There was much turning and looking at the officer, ducking down, and movement, even after the car stopped.

The officer testified that he was hesitant to approach the car. The driver, McNichol, was "unusually" nervous and trembling. The defendant, a front seat passenger, was sweating and extremely nervous.

The officer directed defendant to exit the car. He testified that his reasons for taking this action were:

> Well, due to the movement in the vehicle I thought possibly there could be a handgun in the vehicle. I had concern for my safety. At that time when Mr. McNichol went back to the car, I asked Mr. Wilson to step out, that is my whole purpose of not approaching the vehicle, by myself, with three occupants in the vehicle, I wanted each one out at a time to speak to each individual, for my safety.

Joint Appendix 32, *Maryland v. Wilson*, No. 95-1268.

When defendant exited the car, he dropped narcotics in plain

view of the officer. He was charged with possession of the narcotics with intent to distribute, and related offenses.

The court below, *State v. Wilson*, 340 Md. 502, 667 A.2d 342 (Md. App. 1995), refused to extend what it called the "automatic police prerogative" of having drivers in traffic stops exit their vehicles—under the rule of *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)—to passengers as well. Reasonable suspicion, the Maryland court said, is required for an order to a passenger to exit an automobile in a simple traffic stop setting.

As this Court is aware, there is a considerable split among the federal and state courts concerning whether the *Mimms* rule applies to both passengers and drivers. The cases are ably collected and presented in the brief of the petitioner and will not be repeated here. It appears that the majority of cases have ruled in favor of an officer's control of passengers, as well as drivers. These courts have understood *Mimms* as permitting this (a view shared by the dissent in *Mimms* and not refuted by the majority in that case. *Mimms* at 122-23).

If there is one touchstone in all the cases that have ruled in favor of an absolute rule for passengers, it is officer safety. These courts have wisely balanced the right of privacy against the potential danger of death and injury that officers face in *every* traffic stop. For these courts this grave and ever-present potential has tipped the balance.

No more recent or eloquent statement to this effect exists than in the Ninth Circuit Court of Appeals decision in *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 1841 (1996). In *Ruvalcaba* the court ruled that a police officer who has lawfully stopped a vehicle for a traffic violation may order the passengers as well as the driver of the vehicle to step outside the car despite the absence of probable cause or reasonable suspicion of criminal activity, and even if the situation appears normal and benign.

The court held that the *de minimis* intrusion into an occupant's liberty is outweighed by the government's interest in officer safety.

> The primary basis behind the legitimate and weighty governmental interest in *Mimms* was the danger to police officers when confronting a driver seated in an automobile. (citations omitted) . . . That danger is equally grave when a police officer confronts passengers; indeed, it may be more dangerous to have the driver outside the vehicle while one or more other passengers are left inside. One or more passengers may be seated in the back seat of a car, or the back of a sport utility vehicle, making it difficult, if not impossible, for the officer to keep a close watch on these passengers. *See United States v. Salas*, 879 F.2d 530, 535 (9th Cir.), *cert. denied*, 493 U.S. 979, 110 S. Ct. 507, 107 L. Ed. 2d 509 (1989) ("A weapon can be concealed under the seat of a vehicle. It is readily accessible to be used to harm any police officer who approaches an automobile . . . ."). Having all occupants step out of the vehicle protects the safety of the officer while the officer is dealing with the driver regarding the traffic violation. We believe that the governmental interest weighs strongly in favor of permitting a police officer to order all occupants out of a vehicle.
>
> The intrusion into a passenger's liberty is minimal. The automobile has been stopped lawfully, and the passenger is, for the time being, going nowhere. As with the driver, "the only question is whether he shall spend that period sitting [in the car] or standing alongside it." *Mimms*, 434 U.S. at 111, 98 S. Ct. at 333. The passenger is not asked to expose any more of his person than is already exposed by virtue of being in the vehicle during the traffic stop. Of course, no additional intrusion into the passenger's liberty, such as a frisk or prolonged detention, may be justified by the traffic stop absent some additional suspicion. The mere order to exit the vehicle, however, is significant.
>
> The balance of interests in this case weighs heavily in favor of police officers. In the area of police confrontations

> with occupants of legally stopped vehicles, wide deference is appropriately granted to the officers' need for protection, especially when the intrusion is so minimal. We hold that once a police officer has lawfully stopped a vehicle for a traffic violation, the officer may, consistent with the Fourth Amendment and despite the absence of probable cause or reasonable suspicion of criminal activity, order all occupants of the vehicle to step outside.
>
> Although we recognize that the driver, not the passengers, was the cause of the traffic stop, that fact does not alter the balance of interests. The weighty interest in officer safety is not dependent on the danger from the driver as a result of being stopped for a traffic violation, it is dependent on the inherent danger from approaching seated people in a vehicle, whether driver or passenger. Justice Stevens, dissenting in *Mimms*, recognized this logic. *Mimms*, 434 U.S. at 122, 98 S. Ct. at 339 (Stevens, J., dissenting) ("Because the balance of convenience and danger is not different for passengers in stopped cars, the Court's logic necessarily encompasses the passenger.").

64 F.3d at 1326-28.

Amici know that concerns such as the ones expressed by the Ninth Circuit Court of Appeals are well-founded. In part, they are borne out by recent government reports on assaults upon police officers. The statistics show quite vividly that traffic stops rank among the most dangerous operations law enforcement officers perform.

For example, in 1992, 81,252 law enforcement officers were assaulted, resulting in 29,673 injuries. Nine percent of these assaults took place while the officers were making traffic pursuits or stops. United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports* 61 (1992).

In 1993, 66,975 officers were assaulted, with 24,031 injuries, and again 9% of the assaults were attributable to traffic pursuits

or stops. United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports* 65 (1993).

The reports for 1994 are equally disturbing: 64,912 assaults; 23,194 injuries; 9% in traffic pursuits or stops. United States Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports* 67 (1994). The statistics for the year 1994 are the most recent available.

Law enforcement officers who enforce traffic laws are required to stop vehicles and come into close contact with the drivers. An officer's vision is limited by the physical structure of the car, van, or truck; the amount of natural and artificial light; and the usual distraction of passing cars.

An officer's safety is enhanced if he can see the faces of all occupants (to observe hostility or panic) and their hands (to know they are not holding weapons). Many, if not most of the officers who have been killed while enforcing traffic laws, did not perceive their final stop as one which involved a high personal risk.

If it is an unreasonable intrusion to order a passenger to stand outside a vehicle, it follows that if an officer approaches a car from the curb side (to avoid traffic hazards), he cannot lawfully direct the passenger to open the vehicle's door for safety purposes. Can an officer order a passenger to lower a car window, particularly one that is darkly tinted and only partially open? That action, surely, implicates the Fourth Amendment as well!

How far do the protections of the Fourth Amendment go? Could an officer order a passenger to keep his hands in his lap so they can be seen?

Many police instructors teach that it is often safer for a lone officer to require all passengers to remain in the vehicle, so that

he is not outflanked.[1] That too, would be a "detention" under the reasoning of the court below and would infringe the "right" of passengers to stand by the side or behind a police officer.

If the rationale of the court below is sound, absent suspicious circumstances, a police officer cannot order passengers to exit a vehicle, nor may he require them to remain in the car. He may not direct them to open a door, lower a window, or keep their hands in full view. *Amici* suggest that with the proliferation of handguns and the frequency of tinted car windows, traffic enforcement officers unjustifiably will be exposed to grave danger.

Moreover, an officer's heightened fear of an assault may cause him to reduce the number of legitimate traffic stops he makes. The public at large will suffer from a diminishment in traffic safety.

Amici submit that the reasonableness requirement of the Fourth Amendment anticipates a balancing of interests between the physical safety of law enforcement officers and the comfort and rights of a vehicle's occupants.

Amici suggest that society will be better served by prioritizing officer safety. Firstly, because the intrusion to vehicle occupants is minimal. Secondly, there is a general danger to everyone who might encounter a vehicle that is fleeing the scene of an assault upon an officer. Thirdly, as a matter of fundamental fairness, society should provide for the job-related safety of those persons who are sworn to serve and protect it. When an

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[1] *See, e.g.*, Adams, McTernan, and Remsberg, *Street Survival: Tactics for Armed Encounters* 79, 82 (1980, 1995); Remsberg, *The Tactical Edge: Surviving High Risk Patrol* 277 (1986).

officer can control the location of all occupants of a vehicle during a traffic stop, the safety of all persons is enhanced.

Amici further submit that the adoption of a bright line rule covering passengers in traffic stops will further the Court's recognition in *New York v. Belton*, 453 U.S. 454, 458 (1981), that "the protection of the Fourth and Fourteenth Amendments 'can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.'" *Amicus* AELE has argued in Fourth Amendment cases before this Court, such as *Belton*, that bright line guidance for the police is an effective means of ensuring police adherence to Fourth Amendment requirements. Such guidance can be equally effective in serving the equally necessary goal of police officer safety.

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

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